

CLAUSE H-53 – WARRANTY OF SUPPLIES OF A COMPLEX NATURE (August 2002)

(a) Definitions.

"Acceptance," as used in this clause, means the act of an authorized representative of SURA by which SURA assumes for itself, or as an agent of another, ownership of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the subcontract.

"Correction," as used in this clause, means the elimination of a defect.

"Supplies," as used in this clause, means the end items furnished by the Subcontractor and related services required under this subcontract. The word does not include "data."

(b) Subcontractor's obligations.

- (1) The Subcontractor warrants that for \_\_\_\_\_ all supplies furnished under this subcontract will be free from defects in material and workmanship and will conform with all requirements of this subcontract; provided, however, that with respect to Government or SURA-furnished property, the Subcontractor's warranty shall extend only to its proper installation, unless the Subcontractor performs some modification or other work on the property, in which case the Subcontractor's warranty shall extend to the modification or other work.
- (2) Any supplies or parts thereof corrected or furnished in replacement shall be subject to the conditions of this clause to the same extent as supplies initially delivered. This warranty shall be equal in duration to that set forth in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.
- (3) The Subcontractor shall not be obligated to correct or replace supplies if the facilities, tooling, drawings, or other equipment or supplies necessary to accomplish the correction or replacement have been made unavailable to the Subcontractor by action of SURA. In the event that correction or replacement has been directed, the Subcontractor shall promptly notify the Subcontracting Officer, in writing, of the nonavailability.
- (4) The Subcontractor shall also prepare and furnish to SURA data and reports applicable to any correction required (including revision and updating of all affected data called for under this subcontract) at no increase in the subcontract price.
- (5) When supplies are returned to the Subcontractor, the Subcontractor shall bear the transportation costs from the place of delivery specified in the subcontract (irrespective of the f.o.b. point or the point of acceptance) to the Subcontractor's plant and return.
- (6) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this subcontract.

(c) Remedies available to SURA.

- (1) In the event of a breach of the Subcontractor's warranty in paragraph (b)(1) of this clause, SURA may, at no increase in subcontract price –
  - (i) Require the Subcontractor, at the place of delivery specified in the subcontract (irrespective of the f.o.b. point or the point of acceptance) or at the Subcontractor's plant, to repair or replace, at the Subcontractor's election, defective or nonconforming supplies; or
  - (ii) Require the Subcontractor to furnish at the Subcontractor's plant the materials or parts and installation instructions required to successfully accomplish the correction.
- (2) If the Subcontracting Officer does not require correction or replacement of defective or nonconforming supplies or the Subcontractor is not obligated to correct or replace under paragraph (b)(3) of this clause, SURA shall be entitled to an equitable reduction in the subcontract price.
- (3) The Subcontracting Officer shall notify the Subcontractor in writing of any breach of the warranty in paragraph (b) of this clause within \_\_\_\_\_. The Subcontractor shall submit to the Subcontracting Officer a written recommendation within \_\_\_\_\_ as to the corrective action required to remedy the breach. After the notice of breach, but not later than \_\_\_\_\_ after receipt of the Subcontractor's recommendation for corrective action, the Subcontracting Officer may, in writing, direct correction or replacement as in paragraph (c)(1) of this clause, and the Subcontractor shall, notwithstanding any disagreement regarding the existence of a breach of warranty, comply with this direction. If it is later determined that the Subcontractor did not breach the warranty in paragraph (b)(1) of this clause, the subcontract price will be equitably adjusted.
- (4) If supplies are corrected or replaced, the period for notification of a breach of the Subcontractor's warranty in paragraph (c)(3) of this clause shall be \_\_\_\_\_ from the furnishing or return by the Subcontractor to SURA of the

corrected or received supplies or parts thereof, or, if correction or replacement is effected by the Subcontractor at a Government or other activity, for \_\_\_\_\_ thereafter.

- (5) The rights and remedies of SURA provided in this clause are in addition to and do not limit any rights afforded to SURA by any other clause of the subcontract.